

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>MURRAY KEATINGE,</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 99-321-P-H</b>
	)	
<b>ELIZABETH E. BIDDLE, ET AL.,</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**ORDER ON MOTIONS**

**PLAINTIFF’S MOTION TO AMEND COMPLAINT**

The plaintiff’s motion to amend complaint is **GRANTED IN PART AND DENIED IN PART** as follows.

The motion is **DENIED** as to the Unfair Trade Practices Act Count, because the claim is legally insufficient on its face. See Carlo v. Reed Rolled Thread Die Co., 49 F.3d 790, 792 (1st Cir. 1995) (observing that while courts should liberally grant motions to amend, “a court has the discretion to deny them if it believes that, as a matter of law, amendment would be futile”) (citations omitted). Lawyers are not subject to the Act because they are already extensively regulated under Maine law.<sup>1</sup>

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<sup>1</sup> In Maine, lawyers’ behavior is regulated under the inherent authority of the Maine Supreme Judicial Court and statutory authority. See 4 M.R.S.A. §§ 801 (authorizing the Supreme Judicial Court to establish a Board of Bar Examiners), 805-A (delineating qualifications for admission to practice), 851-860 (prescribing procedures for removal and resignation of attorneys) (West 1989 & Supp. 1999); Me. R. Bar Rule 4 (establishing a Board of Overseers of the Bar to administer and enforce the Rules of Bar), Rule 5 (establishing a Bar Counsel to investigate and dispose of allegations of attorney misconduct), Rule 7 (establishing a Grievance Commission to review and approve Bar counsel (continued...))

See 5 M.R.S.A. § 208(1) (exempting transactions regulated under laws administered by a state board); First of Maine Commodities v. Dube, 534 A.2d 1298, 1301 (Me. 1987) (“Because by statute the Maine Real Estate Commission extensively regulates brokers’ activities, including the execution of exclusive listing agreements, such activities fall outside the scope of Maine’s Unfair Trade Practices Act. . . .”); Wyman v. Prime Discount Securities, 819 F. Supp. 79 (D. Me. 1993) (same holding for securities brokers).

The motion is **GRANTED** as to the claim for punitive damages. Although I am doubtful that the plaintiff can prove such a claim under Maine’s stringent standards, the plaintiff has properly alleged malice or its equivalent to withstand a motion to dismiss.

The motion is **GRANTED** as to the claim for conversion.

#### **DEFENDANTS’ MOTION TO DISMISS**

The defendants have filed a motion to dismiss and the parties have filed evidentiary materials. I decline to convert this motion to a summary judgment motion and treat it, therefore, as a motion to dismiss under Fed. R. Civ. P. 12(b)(6), testing only the allegations of the complaint. The motion to dismiss is **GRANTED IN PART AND DENIED IN PART** as follows.

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<sup>1</sup> (...continued)  
recommendations and to conduct public disciplinary hearings), Rule 11 (establishing an Ethics Commission to make recommendation on ethical issues); see also Board of Overseers of the Bar v. Lee, 422 A.2d 998 (Me. 1980) (recognizing both sources of authority).

The motion is **GRANTED** as to the claim for intentional infliction of emotional distress. The facts as alleged in the complaint do not reach the level required under Maine law, that the defendant's conduct be "so extreme and outrageous as to exceed all possible bounds of decency." Davis v. Currier, 1997 Me. 199, ¶ 5 (quoting Colford v. Chubb Life Ins. Co. of Am., 687 A.2d 609, 616 (Me. 1996)).

In all other respects the motion is **DENIED**.

**PLAINTIFF'S MOTION FOR ORAL ARGUMENT**

The plaintiff's request for oral argument on the motion to dismiss is **DENIED**.

**SO ORDERED.**

**DATED THIS 20TH DAY OF MARCH, 2000.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

U.S. District Court  
District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 99-CV-321  
KEATINGE v. BIDDLE, et al  
Assigned to: JUDGE D. BROCK HORNBLY  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None  
Cause: 28:1332 Diversity-Breach of Contract

Filed: 10/19/99  
Jury demand: Plaintiff  
Nature of Suit: 360  
Jurisdiction: Diversity

MURRAY KEATINGE  
plaintiff

LEE H. BALS  
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EAST TOWER, 4TH FLOOR  
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REGAN M. HORNNEY, ESQ.  
MARCUS, GRYGIEL & CLEGG, P.A.  
100 MIDDLE STREET E. TOWER  
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v.

ELIZABETH H BIDDLE  
defendant

JAMES M. BOWIE  
THOMPSON & BOWIE  
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P.O. BOX 4630  
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STROUT & PAYSON PA  
defendant

JAMES M. BOWIE  
(See above)

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KENT H KEATINGE  
Interested Party

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